



[4410-05OP]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 523 and 544

[BOP-1164-P]

RIN 1120-AB64

Good Conduct Time: Alternative Adult Literacy Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to amend its rules on Good Conduct Time (GCT) and Literacy. The purpose of this proposed rule is to provide effective literacy programming alternatives to the General Educational Development (GED) program that more effectively meet the specialized needs of inmates. This will also have the added benefit of reducing lengthy waiting lists for the GED program. This proposed rule will exempt inmates from the "satisfactory progress" provision of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and/or the Prison Litigation Reform Act of 1995 (PLRA) if they participate in an "authorized alternative adult literacy program." The Bureau's Literacy Program rules, which currently contemplate only GED attainment,

would also be revised to allow for "authorized alternative adult literacy programs." This change means that inmates participating in "authorized alternative adult literacy programs" will not need to demonstrate satisfactory progress toward earning a GED credential to be considered for the full benefits of GCT. Other than the change regarding inmates in "authorized alternative adult literacy programs," we propose no further substantive changes.

DATES: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but

do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Further Information Contact" paragraph.

The Proposed Rule:

In this document, the Bureau of Prisons (Bureau) proposes to amend its rules on Good Conduct Time (GCT) and Literacy. The

purpose of this proposed rule is to provide effective literacy programming alternatives to the General Educational Development (GED) program that more effectively meet the specialized needs of inmates. This will also have the added benefit of reducing lengthy waiting lists for the GED program.

Title 18 U.S.C. 3624(b)(1) provides that in awarding good conduct credit, the Bureau must consider whether the inmate has earned or is making satisfactory progress towards earning a high school diploma or equivalent degree. The Director is given authority to make exemptions to the GED requirements as he deems appropriate by 18 U.S.C. 3624(b)(4).

Through the Bureau's Literacy Program, inmates are prepared to compete for available jobs and cope with post-release community, family, and other responsibilities. In this proposed rule, the Director invokes his authority in 18 U.S.C. 3624(b)(4) to make an exemption to the GED requirements in order to provide an alternative for inmates whose needs are not met by the GED program while also providing relief to the growing demand for Literacy Programs.

By amending 28 CFR 523.20 and 544.71, inmates participating in "authorized alternative adult literacy programs" will receive the full benefit of GCT provisions while also obtaining the maximum possible benefit from a literacy program that best meets their unique needs.

Title 18 U.S.C. 3624 (b) (1) requires the Bureau to consider whether an inmate has earned or is making satisfactory progress toward earning a high school diploma or an equivalent degree in order to award good conduct credit to that inmate. If inmates are not making satisfactory progress toward earning a high school diploma or equivalent degree, they may suffer negative consequences to their GCT credit. Although we made extensive efforts to enroll as many inmates in the Bureau's Literacy Programs (described in 28 CFR part 544) as possible, the number of inmates waiting to enroll in adult literacy programs as of October 2010, was 17,609 or approximately 11% of the Bureau's inmate population.

Further, it became apparent that the Bureau's Literacy Program was not meeting the specific needs of certain groups of inmates. For instance, according to officials from the Mexican Ministry of Education, GED certificates are not accepted by Mexican employers and government. The Mexican Secundaria Program (the compulsory education for Mexican nationals) is a better alternative reentry program for inmates who will be released to Mexico than the U.S. based GED program. Therefore, for deportable aliens (Mexican nationals and other nationalities) whose primary language is Spanish and whose release country accepts the Mexican Secundaria certificates, the Mexican Secundaria Program is the better, more practical option.

For this reason, the Bureau offers the Mexican Secundaria program to inmates as described above. The Bureau does not intend the Mexican Secundaria Program to be a literacy option for U.S. citizen inmates. U.S. citizen inmates are required to take the GED program to enhance their opportunities for successful post-release employment because GED certificates are the basic academic requirement for most entry-level jobs in the United States.

Another group of inmates whose needs may not be met by the GED program are those inmates who face cognitive challenges. Such inmates have unique intellectual and employment needs and may have already reached their optimum level of academic achievement. Under current regulations, inmates whose cognitive abilities have precluded them from being able to complete the GED have tended to drop out of the GED program or otherwise receive an exemption for not showing gain in academic achievement scores, often after a prolonged period of enrollment. These inmates would be better served by giving them the option of participating in "authorized alternative adult literacy programs" which would teach them to function successfully (in society and while incarcerated) by assisting them in the development of the life skills needed to manage their lives on a daily basis in a respective residential or community setting.

Groups of inmates like the two described above have needs that are not addressed by the GED program. Inmates in both groups who participate in Bureau "authorized alternative adult literacy programs" would effectively receive the benefit of the program to the extent that their unique circumstances permit, but despite this accomplishment, they would not, under the current regulatory structure, receive the full amount of GCT that their peers who are able to participate in the GED program could receive.

This proposed rule will allow the Director to exercise his authority under 18 U.S.C. 3624(b)(4) to exempt inmates from the "satisfactory progress" provision of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and/or the Prison Litigation Reform Act of 1995 (PLRA) if they participate in an "authorized alternative adult literacy program." The Bureau's Literacy Program rules, which currently contemplate only GED attainment, are also being revised to allow for "authorized alternative adult literacy programs." This change means that inmates eligible for "authorized alternative adult literacy programs" will not need to demonstrate satisfactory progress toward earning a GED credential to be considered for the full benefits of GCT.

Executive Order 12866

The Director certifies that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR parts 523 and 544

Prisoners.

Charles E. Samuels, Jr.,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to revise 28 CFR parts 523 and 544 as follows.

SUBCHAPTER B -- INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523 -- COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161-4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510.

2. Amend § 523.20 by revising paragraph (d) to read as follows:

§ 523.20 Good Conduct Time.

* * * * *

(d) Notwithstanding the requirements of paragraphs (b) and (c) of this section;

(1) An inmate participating in an authorized alternative adult literacy program is eligible for a yearly award of good conduct time; and

(2) An alien subject to a final order of removal, deportation, or exclusion, is eligible, but is not required, to participate in a literacy program, or to be making satisfactory progress toward earning a General Educational Development (GED) credential, to be eligible for a yearly award of good conduct time.

SUBCHAPTER C – INSTITUTIONAL MANAGEMENT

PART 544 – EDUCATION

SUBPART H – LITERACY PROGRAM

3. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 C.F.R. 0.95-0.99.

4. Amend § 544.71 by revising paragraph(a) introductory text and paragraph (a)(4) and adding paragraph (a)(5) to read as follows:

§ 544.71 Exceptions to required literacy program participation.

(a) The following inmates are not required to attend the literacy program under § 544.70:

* * * * *

(4) Inmates determined by staff to be temporarily unable to participate in the literacy program due to special circumstances beyond their control (e.g., due to a medical condition, transfer on writ, on a waiting list for initial placement). Such inmates, however, shall be required to participate when the special circumstances are no longer applicable; and

(5) Inmates who participate in authorized alternative adult literacy programs (programs other than the GED program) due to special circumstances, such as release destination or learning ability.

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